DOCUMENT RESUME

ED 178 925 CS 205 271

AUTHOR	Barnett, Stephen R.
TITLE	Local Monopoly in the Newspaper Industry: Some Skepticism about Its Economic Inevitability and Governmental Embrace.
PUB DATE	Dec 78
NOTE	72p.: Paper presented at the Federal Trade Commission Symposium on Media Concentration (Washington, D.C., December 14-15, 1978); For related documents, see CS 205 269-278 ; Best copy available
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Economic Factors; *Federal Legislation; *Industry; *Marketing; *Newspapers; Publicize Advertising; Monopoly; *Newspaper Preservation Act 1970; Ownership

ABSTRACT

This is one of several papers presented at a Federal Trade Commission Symposium on Media Concentration. Local newspaper monopolies exist in over 97% of U. S. cities. However, inevitable economic forces are not the only cause of monopoly as some have suggested. Two other contributors to monopoly have been economic practices by daily newspapers and governmental intervention in the economics of daily newspapers. While various economic practices have encouraged monopoly, combination rate structures have been especially instrumental. Combination rates are for space sold simultaneously in both a morning and evening newspaper, published by either a single owner or by two publishers operating under a joint operating agreement. The intent behind the rates not only reflects a philosophy of reduced combination costs, but makes the combination a must-buy, eliminating competition. With the Newspaper Preservation Act, Congress has created an antitrust exemption for the joint-operating agreements existing between the only two daily newspapers in 22 cities. These agreements, consisting of plant-sharing, joint price-fixing of advertising and circulation rates, and a sharing of profits, have worked to prevent entry by other newspapers into the market and have established a congressionally approved editorial voice in these cities. (MKM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

BEST COPY AVAILABLE

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Stephen R. Barnett

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED178925

LOCAL MONOPOLY IN THE NEWSPAPER INDUSTRY: SOME SKEPTICISM ABOUT ITS ECONOMIC INEVITABILITY AND GOVERNMENTAL EMBRACE

by Stephen R. Barnett*

Draft of Talk To Be Given at FTC Media Symposium, December 15, 1978, Washington, D.C.

---

*/ Professor of Law, University of California, Berkeley (on leave); presently Deputy Solicitor General, U.S. Department of Justice. I am speaking solely as an individual and not in any official capacity; the present subject matter has no relation to my responsibilities in the Department of Justice.

CS205271

I. INTRODUCTION

1. Definitions: By "local monopoly" in the daily newspaper industry, I mean the absence of full competition between general circulation newspapers in the same city; that is, I include under "monopoly" both single-publisher cities and cities where two publishers have a joint-operating agreement (though I will consider the latter condition separately). I accept Professor Rosse's data, in the draft of his paper here (page 2, Table 1), that of 1,536 U.S. cities with daily newspapers, only 35 have directly competitive dailies; the remaining 97.7 percent are monopoly cities, including the 21 (I would have said 22) that have joint operating agreements.

2. As a policy matter, I take it for granted that local daily-newspaper monopoly is not a desirable condition. A variety of public policies, rooted in the First Amendment, the antitrust laws, and elsewhere, are better served when there are separate and competing newspaper voices within a city.

The stifling effect of local newspaper monopoly, as it exists throughout the country, is not well appreciated in Washington, D. C. Apart from the fact that Washington still has competing local dailies, it tends to be more concerned with national than with local news, and at the national level there is a relative plethora of competing media voices -- of available ways to get information or opinion before the public. That is not true, with respect to information and opinion on local matters, in the overwhelming majority of American cities.

3. The newspaper industry takes the position that local monopoly, at least in all but the largest cities, is economically inevitable. A similar position is taken by Professor Rosse, in his previous writings and appearances and in his paper here today. I am not qualified to evaluate Professor Rosse's economic analysis of the trend toward local newspaper monopoly. I cannot deny -- nor confirm -- that the "fundamental economic forces" (p. 48) he points to do exist.

It is clear to me, however, that those are not the only causes of local newspaper monopoly. I propose to consider two other causes, or groups of causes, and their policy implications. The first is economic practices by daily newspapers, and one form of advertising rate in particular; the second is governmental intervention in the economics of daily newspapers, particularly through the Newspaper Preservation Act. My thesis is that newspaper monopoly may have been significantly propelled by the industry itself, both through its own practices and through the governmental intervention it has sought and obtained; and that even at this late date, it may be possible to protect the remaining daily competition and to restore at least some forms of newspaper competition by attending to these causes. Even if that is not the case, there may be other policy reasons for attending to these causes.

II. ECONOMIC PRACTICES: COMBINATION ADVERTISING RATES.

1. As an initial matter, even assuming that the economic forces identified by Professor Rosse do exist, one would think it at least relevant to note the well-documented economic practices in the newspaper industry that have also played a role in promoting newspaper monopoly. Without discussing them at any length, I would note:

a) The industry-wide practice, under the by-laws of the Associated Press, whereby AP members could and did blackball local competitors or would-be competitors who sought AP membership. The practice was fully documented, and held illegal by the Supreme Court, in the Associated Press case in 1945 (326 U.S. 1). In congressional hearings on the Newpaper Preservation Act in the late 1960's it was reported that initial requirements for wire-service membership were still unreasonable (see Roberts, Antitrust Problems in the Newspaper Industry, 82 Harvard Law Review 319, 331-336 (1968)). So far as I know, no governmental action was taken.

b) Territorial exclusivity in the licensing of features (and, more recently, of supplemental news services) has surely functioned as a barrier to entry and a cause of the demise of newspapers not having the desirable contracts. I suggest this may be why such exclusivity has been, in Professor Rosse's words (p. 63), "so important" -- that is, important enough to the licensees to compel such treatment from the licensors.

c) I suspect that the licensing of television ations to daily newspapers in the same city has been a significant cause of newspaper monopoly. One has heard a good deal from the industry about the supposed opposite case -- that of the Boston Herald Traveler, which folded after the FCC took away its Boston TV license (a false case, since if the Herald-Traveler has not folded its competitor, the Record-American, would have). An historical study would show, I suggest, a correlation between the folding of metropolitan dailies and the possession of television licenses by dailies with which they competed; the papers with the TV licenses are the ones that have lived to see the

promised land of monopoly. It is possible, of course, that the trend toward monopoly would have proceeded just as fast in any event. But I suggest that the enormous economic and other advantages inhering in a local television license, when possessed by one (or more) competing dailies in a city but not by others, contributed toward unbalancing the competition in such a way as to hasten its end.

d) I could go on. Various other anti-competitive practices in the industry were noted in the congressional hearings on the Newspaper Preservation Act (see the Roberts article, supra) -- for example, the practice of restricting independent distributors from distributing competing newspapers. In general, and to say the least, the picture is not one of an industry dragged kicking and screaming into the world of monopoly by the economic forces with which Professor Rosse is concerned.

2. I want to focus on advertising rate structures and particularly on "combination rates" -- the rates for space sold simultaneously in both a morning and evening newspaper, published either by a single owner or by two publishers operating under a joint-operating agreement. The structuring and use of such combination rates have been, I think, important causes of newspaper monopoly -- by helping to kill off papers competing against the combination -- and they remain instrumental today in periling the competition that still exists and in protecting the monopolies against the prospect of new competition.

a) Combination ad rates were the subject of a crucial Supreme Court decision -- a most unfortunate decision that bears heavy responsibility for the decline of local newspaper competition in America. This was the Times-Picayune case, decided (by a 5 to 4 vote) in 1953 (345 U.S. 594). In New Orleans the morning Times-Picayune and the evening States, under common ownership, were competing against the evening Item. The Times-Picayune and the Item

had adopted a "forced" combination rate for both general and classified advertisers, whereby those advertisers could not buy space in either paper separately; they were forced to insert identical copy in both papers, or none. The Government brought an antitrust suit attacking the practice as an unreasonable restraint of trade in violation of Section 1 of the Sherman Act, and as an attempt to monopolize in violation of Section 2 of the Sherman Act. The Supreme Court recognized that the use of forced combination -- which it called "unit selling" -- was widespread in the newspaper industry and that data in the record strongly suggested that the practice had a role in killing off newspapers attempting to compete with such combinations:

> When the Times-Picayune Publishing Company in 1949 announced its forthcoming institution of unit selling to general advertisers, abou. 180 other publishers of morning-evening newspapers had previously adopted the unit plan. Of the 598 daily newspapers which broke into publication between 1929 and 1950, 38% still published when that period closed. Forty-six of these entering dailies, however, encountered the competition

of established dailies which utilized unit rates; significantly, by 1950, of these 46, 41 had collapsed. Thus a newcomer in the daily newspaper business could calculate his chances of survival as 11% in cities where unit plans had taken hold. Viewed against the background of rapidly declining competition in the daily newspaper business, such a trade practice becomes suspect under the Sherman Act. [345 U.S. at 604 (footnotes omitted).] _/

_/ Professor Rosse in his paper here presents a statistic that similarly suggests the historical role of combination rates in terminating local competition. He reports (page 8, Table 4) that as of 1948, 1958, 1968, and 1973, papers in cities of 500,000 population that published morning, evening, and Sunday editions were "dramatically" less likely to face competition than were papers in such cities that published only morning or evening and Sunday editions. Like the data reviewed by the Court in Times-Picayune, these figures suggest that a paper publishing both morning and evening editions -- almost certainly with a combination rate -- would be more successful in killing off a competitor than would a paper publishing only one daily edition. Professor Rosse, however, sees no such indication. His interpretation of this datum is only (p. 9): "As a matter of description, this is hardly surprising; the most common mode for the disappearance of competition has been for formerly independent newspapers to merge into a single morning, evening and Sunday scheduled firm, either agency shop or jointly owned." Thus, the only explanation suggested is that the combinations were formed by the city's final newspaper merger -- that they represented only an effect of merger, not a cause. This view ignores the possibility that the combination preexisted the death of a competing paper. Yet as the facts of the Times-Picayune case itself illustrate, and as the industry-wide data on newly established dailies discussed

(continued)

The district court in the Times-Picayune case had found, moreover, that adoption of the forced combination rate by the Times-Picayune and the States had indeed "caused a substantial rise in classified and general advertising linage placed in the States, enabling it to enhance its comparative position toward the Item." 345 U.S. at 600-601.

_/ (continued)

by the Court further show, it was not at all rare for a combination to compete against another paper. What is needed to test the historical effect of morning-evening combinations on newspaper competition is a longitudinal study comparing morning-evening combinations that had competition on a given date with one-edition papers that had competition on that date, to see the percentage of each group that still had competition one or more decades later.

Despite these findings, the Supreme Court held that the forced combination rate in New Orleans did not violate Section 1 or Section 2 of the Sherman Act. Considering whether the rate constituted a "tie-in" of the morning and evening papers that was prohibited by Section 1 of the Sherman Act, the Court declared that the standards for attacking tie-ins are stricter under the Sherman Act than they are under Section 3 of the Clayton Act. 345 U.S. at 609-610. _/ Applying those

---

_/ The Government evidently could not proceed under the Clayton Act -- and presumably still could not today -- because advertising space is not considered a "commodity" within the meaning of that Act. See 345 U.S. at 609 n. 27.

stricter standards, the Court found them not to be met because in its view the Times-Picayune -- as the morning or "tying" product -- did not occupy "a 'dominant' position in the newspaper market in New Orleans," having only about 40% of that market (id. at 611-612). In addition, the Court held that the morning and evening readerships being sold to advertisers under the combination rate did not represent separate products anyway -- the readers were fungible to the advertisers, so that "for present purposes the products are identical and the market the same." Id. at 614. Having disposed of the tie-in issue, the Court went on to consider whether the forced combination rate was in any event an unreasonable restraint of trade under the Sherman Act, for which purpose its inquiry focused on "'the percentage of business controlled, the strength of the remaining competition [and] whether the action springs from business requirements or purpose to monopolize." Id. at 615. The Court found no such unreasonableness,

interpreting the factual record as lacking "evidence from which demonstrably deleterious effects on competition may be inferred," and pointing out that "[m]eanwhile the Item flourishes" (id. at 620-621). (The Item folded, leaving a monopoly in New Orleans, in

See Barber, Newspaper Monopoly in New Orleans: The Lessons for Antitrust Policy, 24 Louisiana Law Review, 503,

Finally, turning to the government's charge of attempt to monopolize under Section 2 of the Sherman Act, the Court noted (345 U.S. at 626) that the intent required for an attempt to monopolize presents a stricter test than that required for the completed offense of monopolization under Section 2 (the latter being "a charge not raised or considered here," id. at 609 n. 26). And the Court found an insufficient showing of the specific intent required for an attempt to monopolize. Ibid. The Court thus concluded that the charged violations of Section 1 and Section 2 of the Sherman Act had not been made out, and

added that it was deciding only the case before it. "We do not determine that unit advertising arrangements are lawful in other circumstances or other proceedings. Our decision adjudicates solely that this record cannot substantiate the Government's view of this case." Id. at 626-628. As mentioned, four Justices dissented.

b) Combination rates remain a common practice today for morning-evening papers, whether singly owned or jointly operated -- though not necessarily in the literally "forced" form. Given the obvious savings in sales and composition costs in running the same advertisement twice, the offering of a combination rate at a discount cannot, itself, be considered anti-competitive. It is instructive, however, to consider the purposes and uses of combination rates today even when they are not compulsory combinations. For this purpose, I refer to evidence that was put on the public court record as part of pretrial deposition testimony in 1975 in a suit against

the joint-operating dailies in San Francisco in which I was counsel for one of the plaintiffs. _/ The evidence consists of two memoranda prepared in 1964 by a national advertising representative, the New York firm of Sawyer-Ferguson-Walker Company, for the San Francisco Chronicle, recommending a national advertising rate structure to be adopted by the Chronicle and the San Francisco Examiner when the two papers entered into their joint-operating agreement, as they did in 1965. The recommended rate structure was in fact adopted (see the Rate Card effective October 1, 1965, which in Exhibit A attached hereto), and the rates in effect today appear essentially unchanged in the ratios between the individual and the combination rates. See 1979 Editor & Publisher International Yearbook, page I-27; see also the current local rates, which are structured even more sharply to compel use of the combination.

_/ The cases were captioned Bay Guardian Co. et al. v. Chronicle Publishing Co. et al., No. C-70-1613 (OJC) United States District Court for the Northern District of California. The cases were subsequently settled, and the court then granted a motion by the newspaper defendants to seal the record. This material was copied from the court's public record before that motion was granted.

There is reason to believe that the principles embodied in these memoranda and in the resulting rate structure in San Francisco are not unique to San Francisco. The firm giving the advice, Sawyer-Ferguson-Walker, is national advertising representative for some 40 daily newspapers, most of which have circulations of 50,000 or more and are located in major markets. See 1978 Editor & Publisher International Yearbook, page VI-6. (The author or the memoranda is listed ibid. as vice president/research and promotion director for the firm.)

The first of the memoranda (Exhibit B attached hereto) is dated March 24, 1964, and titled "San Francisco Combination." In it the author states, among other things:

> In setting a line rate for this proposed combination, ideally from our standpoint, only two things should be considered:
>
> 1. What the circulation will shake down to in order to estimate:
>
> a. how the circulations and thus the rates will divide, and
>
> b. How much we can charge without over or undercharging.

> 2. Keeping the rates for the combination close enough so that the combination will be a must buy thus insuring that San Jose and Oakland can't chip away at the weaker paper. [Page 1, emphasis in original.]
>
> * * *

As to the rates to charge, naturally a forced combination would be the best for us. If this is impossible, it would be desirable to charge as close to a forced combination as is legally possible. Looking at either of the rates mentioned by you, they would seem to be reasonable charges compared with the costs of other combinations arranged by major monopoly newspapers.

[There follows a table comparing proposed rates for San Francisco with rates in other cities.]

I am not sure, however, that even as substantial a saving as this [in buying the combination] would be enough to keep a number of advertisers in the weaker newspaper in San Francisco. Some advertisers are quite anxious to save money by staying out of combinations. * * * [Id. pages 4-5.]

The author then presents his own recommended rate structure -- involving the same price for the combination rate as in the proposals listed, but a higher price for the morning paper and a lower price for the evening one, so that the difference between the morning and the combination rate was reduced from .55 or .65 to .40.

He explains (page 5):

> The trick is to charge as much as possible for your larger paper. If it is close enough to the combination rate, it makes little difference what you charge for the weaker paper. My feeling is that the suggested rate set-up allows so small a saving in not buying the second paper that San Jose could not reasonably expect to steal linage from it. * * *

The author concludes(pages 7-8):

> It is my feeling that the evening newspaper in this combine may have some serious difficulties. It will be so much smaller than the morning newspaper that it might be a difficult "sell." If for legal reasons it is found necessary to make it a genuine optional combination, many national advertisers might buy the morning only. * * *

The second memorandum (Exhibit C) is appended to a letter dated April 14, 1964, and is titled "Bay Area Combination." In it the author proposes (page 5) the rate structure that was in fact adopted as the first national rates for the joint-operating newspapers (see Exhibit A). Among other things, the memorandum states (page 7):

> For the combination to be effective in obtaining evening linage in the national field it is most vital that the rates be set so that the evening is a must buy for virtually all advertisers. This is particularly important and difficult in San Francisco because we are starting out with a relatively weak evening newspaper we want to bolster; and particularly at the beginning we must expect many advertisers to prefer not to use it.
>
> An additional reason the problem is more difficult for an optional combination in San Francisco than in smaller areas is that a major market gets many more small advertisers than do smaller markets -- advertisers who, because of limited budgets, advertise in only the top few markets. They include many who are now one newspaper buyers in San Francisco. They will need a strong incentive to advertise in the combination. If we ascribe too high a proportion of the circulation and the rate to the evening paper, we will be inviting newspaper advertisers to leave it out of their advertising program. * * * [Emphasis in original.]

The author concludes (page 5) after presenting the rate recommendation that was subsequently adopted:

> This rate structure would have the advantage of a reasonable difference in cost between the morning and evening paper and a rate differential between the morning and evening small enough (1.59 milline) to preclude substantial morning only buying.

c) The foregoing evidence indicates that combination rates, even when they are not literally "forced," may have the same objective as when they are: to make the combination a "must buy." If this is so, and if the rates are successful in that objective, then, though I must leave analysis of this pricing behavior to the economists, it seems to me that certain consequences follow concerning the effect of the combination rate on existing and potential newspaper competition. The rate structure as so designed may well function -- since it is built on a maximum rate for the stronger paper, which is virtually indispensable to advertisers -- to maximize the revenue taken in by the combination.

The tendency is thus to damage any existing competition and foreclose any potential competition -- whether from adjoining cities (San Jose or Oakland), from weekly or other papers in the same city, or from other media -- by "attaching" to the weaker paper revenues that would otherwise be available for the competition. In addition, the rate structure is plainly designed to shore up and perpetuate the weaker paper. No matter how weak that paper would be in its own right -- because of inferior content or economic conditions, or both -- it is artificially kept in place as a sentry in its market, and blocks the opening that would be presented to a new entrant if it should disappear.

Combination rates so designed may thus have these effects on competitive situations:

i) Where competition still exists between a combination and a single-edition paper, such combination rates could be expected to have what is apparently their historical effect of aiding the combination to knock off the competition.

ii) Perhaps the most important effect for the present and the future may exist in the very common case of monopoly cities, where a single owner publishes two papers or where there is a joint-operating agreement. Despite the absence of face-to-face daily newspaper competition, such combination rates will still have anti-competitive effects against competition and potential competition -- against suburban papers (including ones that might move into the city), against weekly papers in the city, against other media such as local magazines. This effect seems particularly significant in the light of Professor Rosse's view that the fundamental long-run cause of newspaper monopoly is "loss of effective newspaper market segmentation" (page 48) -- as where, for example, newspapers raise their prices "to a point where segmentation of advertising markets tends to break down; in effect, advertisers continuing to purchase could only afford to buy in one paper" (page 49). The combination rates for the morning-evening combination would seem to have precisely that effect: they raise the price for the stronger paper and attach the weaker paper

in such a way that advertisers must take both, and then that is all they can afford -- they have nothing left in their advertising budget for, say, a weekly paper appealing to a differentiated audience. Moreover, this effect can be expected to become increasingly important. For, as Professor Rosse notes (pages 59-60), the new newspaper technologies are reducing "the relative cost of differentiated or 'tailor-made' newspaper products" and thus "can be expected to increase the probability of successful market segmentation" and "improve the chances of competition in any given city * * *."

iii) Even assuming that local newspaper monopoly is inevitable -- that most if not all cities will be reduced eventually to a single publisher or a single joint operation -- I am not sure it necessarily follows, as Professor Rosse apparently assumes, that this must be <u>the same</u> monopolist forever. Granting that economics of scale will eventually leave only a single publishing operation, it should still be possible

for a well-bankrolled challenger -- perhaps with a base in an adjoining city, such as Oakland to San Francisco -- to challenge the incumbent, do battle for the advertisers and readers, and possibly succeed in wresting the monopoly franchise away. If that is not possible, and the incumbent newspaper retains the monopoly forever no matter how inferior its performance becomes, then support for governmental regulation of the press as a public utility may be difficult to resist. Yet, in fact, the notion of an existing monopoly newspaper owner being displaced by market forces seems fanciful. One reason may be the effect of combination rates in propping up the weaker of the two daily newspapers -- the paper that would be the natural point of attack for a potential competitor. Because the weaker paper is enabled to share the strength of the stronger one, with advertisers compelled to use it no matter how small its circulation becomes, its weakness is hidden, it is protected from the downward cycle of which Professor Rosse speaks, and the possibility of its being replaced by a worthy challenger -- either as a potential new partner in a joint-operating agreement, or as a

step toward challenging a single owner -- is eliminated.

d) For the foregoing reasons, I suggest that combination advertising rates which are forced combination rates, either by their terms or in economic effect, have served historically and continue to serve to promote and maintain local newspaper monopoly. A governmental attack on such rates would of course have to contend with the Times-Picayune case, but there are several reasons why that decision should not prove an insurmountable barrier. Apart from the views of authoritative commentators that the decision is no longer good law, _/ it would appear to be

---

_/ Turner & Areeda say its holding that tie-in standards differ under the Clayton and Sherman Acts is "obsolete." II Antitrust Law §304c. And also that it's wrong in not recognizing the morning and evening papers as representing separate advertising products. Vol. III §733c.

Sullivan says dominance of the tying firm is no longer required. 438-440.

readily distinguishable in any case involving a local monopoly -- a single publisher or a joint operating agreement which, unlike the Times-Picayune, has no competition in the local daily newspaper market. Such a case would be, unlike Times-Picayune, a case of completed monopolization rather than attempt to monopolize, so that -- even aside from the changing law of tying arrangements -- no specific intent to destroy competition or build a monopoly would be required. As the Court said in Times-Picayune in comparing the monopolization offense (345 U.S. at 609 n. 26): "[T]he use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful." Here, it should be enough that the combination rates constitute conduct that increases barriers to entry on the part of newspapers and other media competitors who might receive the advertising revenue that is forced by the combination rates into the weaker newspaper. See Sullivan, Antitrust, p. 114. /

/ Also, in judging the reasonableness of the rates under Section 1 of the Sherman Act, considerations such as "'the percentage of business controlled [and] the strength of the remaining competition'" (345 U.S. at 615) will be quite different from what they were in Times-Picayune.

Of course, combination rates presumably are not illegal if the combination discount is cost-justified. The evidence discussed above suggests, however, that at least in some cases, the intent behind the rates is not to reflect reduced combination costs but to make the combination a "must buy."/ In addition, it should be noted that if the structure of a particular combination rate was cost-justified ten or twenty years ago, it follows almost automatically that it is not so justified today. This is because of the introduction of electronics to newspaper production, a process which has, as Professor Rosse states (page 59), "greatly lowered the 'first copy' costs of preparing content." With the savings involved in running the same ad in two papers greatly lowered, a much smaller percentage discount would be cost-justified today than before the new technology was introduced.

/ Neither of the memoranda referred to (Exhibits B and C) contains any reference to costs.

III. GOVERNMENT EMBRACE OF NEWSPAPER MONOPOLY: THE NEWSPAPER PRESERVATION ACT

There is one economic practice in the newspaper industry that effectively guarantees local monopoly -- that consists of, and perpetuates, a termination of economic competition between the only daily newspapers in a city - and that has been specifically approved and protected through the intervention of the federal government. I refer to the Newspaper Preservation Act (15 U.S.C. 1801-1804 (1970)), by which Congress created an antitrust exemption for the joint-operating agreements existing between the only two daily newspaper publishers in 22 cities, and for any such future agreements that obtain the approval of the Attorney General (as is now being sought in Cincinnati). These agreements consist, not only of plant-sharing as is popularly supposed (with the industry's encouragement), but of joint price-fixing of advertising and circulation rates and a sharing of all profits between the two publishers on a pre-determined ratio. Of course, the theory behind the Act is that in the absence of such an agreement one of the papers would fold,

and that it is better to have news and editorial competition between two publishers in a city, even if they are merged economically, than no competition at all. I would note the following points about this Act and the agreements it legitimizes.[1]

a) Whatever the policy value of the news and editorial competition that the Act preserves, it seems indisputable that the Act protects, and probably perpetuates, newspaper monopoly in the sense of an absence of economic competition between daily newspapers in the affected cities. So far as I am aware, there is no instance of a successful entry -- and there have been few if any attempted entries -- by a competing daily against a joint-operating agreement, although there have been many attempts and a few successes against single-owner monopolies. When the Act was being considered by Congress, the Federal Trade Commission and the Assistant Attorney General in charge of the

---

[1] I was counsel for a weekly newspaper in a suit challenging the constitutionality of the Act and its application to the joint-operating agreement in San Francisco. The decision of the district court upholding the Act's constitutionality is Bay Guardian Co. v. Chronicle Publishing Co., 344 F. Supp. 1155 (N.D. Cal. 1972). The case was settled before that decision was appealed or the other issues decided.

Antitrust Division both took the position that a joint-operating agreement would probably pose a higher barrier to entry than would a single-publisher monopoly. _/

_/ The FTC stated: "Anticompetitive joint newspaper arrangements may well be less desirable than a full merger with a competitor since such arrangements are likely to create higher and more formidable barriers to entry by any new competitors." Senate Report No. 91-535, 91st Cong., 1st Sess. 9 (1969). The Assistant Attorney General said:

> * * *[I]t is quite a different thing to have a single paper in a market and to have two papers which occupy a market. I think that with a single paper in a market, the chances are much greater than an independent, vigorous voice might enter than if you have two more or less, on the face of it, independent, but,in fact, commercially connected.
>
> I think that that kind of a market is quite a deterrent to anyone bringing in a truly new and independent voice. I think you may find it with one paper, even though they have morning and evening papers, but if you have, ostensibly, two papers in the market, I think your chances of a third entering are very slim.

Testimony of Richard W. McLaren in Hearings on the Newspaper Preservation Act before the Antitrust Subcommittee of the House Judiciary Committee, 91st Cong., 1st Sess. 363 (1969).

This consideration may cast light on the combination-rate practices considered earlier. When the primary objective in structuring combination rates is to make the combination a "must buy," the explanation may lie in the long-range strategic objective of keeping the weaker paper alive and ostensibly healthy. Even if such a rate structure involves foregoing some revenues and profits in the short run in order to favor the weaker paper, it serves in the long run to maintain the two-paper and two-publisher arrangement that is the strongest barrier to new entry. It shores up the weaker paper as a filler of its market slot and a block to competitive entry.

Whatever has been the situation in the past, the effect of joint-operating agreements in erecting barriers to entry will become increasingly important for the future. For, as Professor Rosse notes (page 62), "New newspaper technologies are already proving that they can reduce 'first copy' costs to the point where real newspaper competition may recur." Thus, the premise on which the Newspaper Preservation Act was enacted -- that real newspaper

competition in the affected cities is out of the question; that the only alternative to the two-publisher monopoly authorized by the Act is a single-publisher monopoly -- that premise, even if it was valid, is now becoming increasingly questionable. Yet the potential rebirth of that "real newspaper competition" is likely to the choked off in cities with joint-operating agreements between the established dailies.

Even on the economic facts obtaining when the Act was passed in 1970, it did not appear, with respect to the 22 joint-operating agreements then in existence, that the anticompetitive consequences of those agreements were a necessary price to pay for the economic viability of the jointly-operating papers. The Act's test for exemption of the existing agreements is whether one of the papers was unlikely to succeed <u>when the agreement was entered into</u>, which in a number of cases was decades in the past._/

_/ The population of Albuquerque, for example, had increased 900 percent since the agreement was entered into there, and of Tucson, 600 percent. House Hearing, <u>supra</u>, page 504. In the 1970 Senate debate Senator Hart stated, on the basis of financial information submitted in confidence by the jointly operating publishers, that "as far as I know none of the joint operating agreements are at the moment to be labled 'weak sisters' economically. * * *[I]n all cases rates of return after taxes at the moment seem to make them very attractive investments * * *." Congressional Record 1970, at S 882.

And the monopoly profits that the Act confers on its beneficiaries can be expected to become even greater as technological innovations reduce costs. Professor Rosse says that "[v]igorous and effective management is more likely to preserve newspaper competition than all of the public policy we are likely to conceive" (page 62). But where joint-operating agreements exist there is no such competition to preserve -- only to foreclose. "Vigorous and effective management" will serve only to increase profits and maintain the barriers to competitive entry.

b) Whether or not full-fledged daily newspaper competition might otherwise revive in a particular city, the effect of a joint-operating agreement -- and of the law that legalizes it -- must surely be to transfer money to the joint-operating dailies at the expense of competing media. This follows from the power of the joint operators to set their advertising rates jointly. In light of the cost curves drawn by Professor Rosse (p. 15), it would seem that the joint operators would structure their rates in such a way as to maximize their revenues. It follows, I think, given the finite amount of advertising revenue available in the market, that the rate-setting power of the joint operators will enable them to take revenues away from their media competitors -- from weekly newspapers in the same city, from suburban newspapers, from competitors in other media, from potential semi-weekly or even daily entrants in their city. There is no reason to doubt that, in some cases, this effect will make the difference between life and death for some actual or potential competitor.

c) An Act of Congress that is designed to perpetuate specific newspapers as <u>the</u> daily newspapers in their cities (the Senate Report called them the "established editorial voices" (Senate Report, <u>supra</u>, at 3)), that does perpetuate them no matter how inferior

they become, that intervenes in the marketplace to give certain newspapers the economic power to injure competitors, is not only bad policy but may be unconstitutional. To be sure, the Newspaper Preservation Act is only an exemption from the antitrust laws -- in the words of the court in the Bay Guardian case (344 F. Supp. at 1158), it "merely looses the same shady market forces which existed before the passage of the Sherman, Clayton and other antitrust laws." But it is an interesting and important question whether the basic principles of the antitrust laws, in their application to the news media, are not embodied in the First Amendment as well. Could Congress, for example, have overruled the Supreme Court's Associated Press decision (326 U.S. 1) by enacting an "AP Preservation Act" to legalize the exclusionary by-laws that were there held illegal? I think not, and some of the Court's language seems to support this conclusion:

> It would be strange indeed * * * if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. * * * [326 U.S. at 20.]

Even more to the point was the language of the Court in the Citizen Publishing case, 394 U.S. 131 (1969), the decision that was overruled by the Newspaper Preservation Act. Dealing specifically with a joint-operating agreement, the Court said: "The restraints on competition with which the present decree deals comport neither with the antitrust laws nor with the First Amendment." 394 U.S. at 139. It might be thought to follow that a law specifically authorizing those restraints does not comport with the First Amendment.

Of course, a theory of First Amendment limits on government intervention in the economic marketplace of the media would have to deal with a variety of governmental actions that may favor certain media to the detriment of others -- for example, laws providing postage subsidies or preferential telegraph rates. But a line might reasonably be drawn between laws that merely confer benefits on a group of competitors and laws that authorize injurious or predatory practices. And basic antitrust principles could be looked to to define that line. _/

_/ Even assuming that antitrust principles would have had no impact on the First Amendment if Congress had never enacted antitrust laws, it does not follow that Congress, having enacted the antitrust laws and long made them applicable to newspapers, can exempt newspapers from their ambit with constitutional impunity. Cf. Reitman v. Mulkey, 387 U.S. 369 (1967). It should also be noted that the Newspaper Preservation Act has been

(continued)

d) At the least it might be suggested, as a matter of policy, that if the government is going to intervene in the media marketplace it should do so with a semblance of even-handedness. While the Newspaper Preservation Act favors established metropolitan dailies -- many owned by large chains -- against, for example, small weeklies, the regulations of the Small Business Administration provide that loans will not be made "[i]f the applicant is a newspaper, magazine, book publishing company, radio broadcasting company, television broadcasting company, or similar enterprise." 13 C.F.R. §120.2(d)(6). I understand that this regulation may be amended, or already has been, so as to allow loans to broadcast companies (at least if minority-owned). While the Newspaper Preservation Act remains the law, it is hard to see why loans should not be allowed to small newspaper businesses as well. There ought to be some limit on the government's partisanship in the newspaper market.

_/ (continued)

held, not only to provide an exemption from the federal antitrust laws, but to override state antitrust laws. Bay Guardian Co. v. Chronicle Publishing Co., supra, 344 F. Supp. at 1160. The Act thus has affirmative force and is not simply an exemption from congressional legislation.

e) In addition to the problem of government intervention in the media marketplace, the Newspaper Preservation Act presents in other ways the problem of governmental favoritism for selected media owners. Given the Act's assumption that economic competition between daily papers in the joint-operation cities will not recur, the antitrust immunity conferred by the Act very much resembles a governmental grant of monopoly to the favored publishers. _/ But there is also the individualized decision that the government must make under the Act, through the Attorney General, when an application is made to enter into a new joint-operating agreement.

_/ Senators Hart, Kennedy, Burdick, and Tydings made the point in the minority report of the Senate Judiciary Committee:

> We should recall that the first amendment was the direct response to the British Crown grant of monopoly to particular publishers. This bill could be described aptly as assuring a division of monopoly profit to participants in the immunized agreements. In this, and to the extent that the bill inhibits new entries and injures existing newspapers, significant constitutional issues are raised.

Senate Report, supra, at 13.

In the Cincinnati proceeding, for example, the E.W. Scripps Company, owner of an important newspaper chain and of United Press International, is asking the Attorney General to certify its Cincinnati Post as a failing operation qualified to enter a joint-operating agreement under the Newspaper Preservation Act. This certification, if granted -- as the Antitrust Division has now recommended -- will confer on Scripps not only large and enduring profits in Cincinnati, but, in every realistic way, a permanent daily newspaper franchise in that city. _/ One may wonder why only one company should be eligible to apply for this grant. More important, it is hard to imagine a transaction farther removed from the arms-length dealing that should characterize relations between the government and the press in this country. As the Assistant

---

_/ At the least one would think the Attorney General should, if possible, limit any approval to a limited term of years.

Attorney General said in testifying against the Newspaper Preservation Act: "We do not believe that government promotes newspaper independence by granting newspapers special favors." House Hearings, supra, at 358. The Cincinnati proceeding is the first contested one under the Newspaper Preservation Act, and perhaps will result in the court test that is needed. _/

_/ Although the publisher of a chain of suburban weeklies in the Cincinnati area intervened in the proceeding to oppose the proposed arrangement, any evidence of the effect the arrangement would have on such weeklies was, I am told, ruled irrelevant. It is not irrelevant to a claim by the weekly publisher that the Act is invalid.

f) Finally, the Newspaper Preservation Act is legislation conferring special economic benefits -- legitimizing monopoly power that would otherwise be illegal -- which was lobbied for strenuously (albeit rather secretly) by the newspaper industry. As such the Act may be relevant to complaints by the press today about the treatment it is receiving from the courts. The courts, it is charged, treat the press as seeking special treatment when it is only trying to serve the public. If the press were not so ready to seek special treatment in matters involving its economic interests, it might not be so readily accused of doing so in other matters.

* * *

EXHIBIT A

GENERAL RATE CARD #1

EFFECTIVE OCT. 1, 1965

San Francisco Newspaper Printing Company

660 HOWARD STREET • SAN FRANCISCO CALIFORNIA 94119 • TELEPHONE: 397-5700 (Area Code 415)

Representing: SAN FRANCISCO MORNING CHRONICLE • SAN FRANCISCO EVENING EXAMINER-NEWS CALL BULLETIN • SUNDAY EXAMINER-CHRONICLE

1—PERSONNEL

Advertising Director—Robert S. Ward
National Advertising Manager—Robert E. Lee
Asst National Advertising Manager—Don Mason
Production Manager—Harry Davidson

2—GENERAL ADVERTISING REPRESENTATIVES

SAWYER-FERGUSON-WALKER CO.
Atlanta 30326—3144 Lenox Towers
Chicago 60611—360 N. Michigan Avenue
Southfield, Mich. 48076—Northland Towers
Los Angeles 90057—2120 W. 8th Street
Minneapolis 55402—1111 Foshay Tower
New York 10022—320 Park Avenue
Philadelphia 19102—2 Penn Center Plaza
San Francisco 94104—3707 Russ Building

3—COMMISSION AND CASH DISCOUNT

a. 15% commission to agencies recognized by the San Francisco Newspaper Printing Co.
b. 2% cash discount, excluding Retail/Feature advertising.
c. Discount date—15th of the month following publication.

4—GENERAL

a. It is a condition of this rate card that the San Francisco Newspaper Printing Co. reserves the right to revise its advertising rate at any time, and that advertising contracts of record will be honored for a 30-day period.
b. The San Francisco Newspaper Printing Co. reserves the right to omit any advertising it unqualified for publication
c. Advertising set in imitation of news must carry "Advertisement" at top.
d. The San Francisco Newspaper Printing Co. shall not be liable for failure to publish advertisements by reason of strikes, hurricane, earthquakes, fires, floods, riots, or acts of God.

5—DAILY & SUNDAY R.O.P. RATES (GENERAL)

	Per Line
a. Chronicle—(morning) flat	$2.16
Examiner—(evening) flat	1.90
b. Combination—(M & E) flat	2.58
c. Sunday—flat	2.58

d. Combination rate applies when advertisement appears both morning and evening of same day, or evening and following morning at Advertiser's option. Insertions starting evening edition Saturday will be completed Monday morning. Sunday rate covers that edition only.

EXHIBIT 10
WITNESS Sam T.
2-28-75
SAM C. BARRY, C. S. R.

EXHIBIT A

GENERAL RATE CARD #1

EFFECTIVE OCT. 1, 1965

San Francisco Newspaper Printing Company

660 HOWARD STREET • SAN FRANCISCO CALIFORNIA 94119 • TELEPHONE: 397-5700 (Area Code 415)

Representing: SAN FRANCISCO MORNING CHRONICLE • SAN FRANCISCO EVENING EXAMINER-NEWS CALL BULLETIN • SUNDAY EXAMINER-CHRONICLE

1—PERSONNEL

Advertising Director—Robert E. Ward
National Advertising Manager—Robert E. Lee
Asst National Advertising Manager—Don Mason
Production Manager—Harry Davidson

2—GENERAL ADVERTISING REPRESENTATIVES

SAWYER-FERGUSON-WALKER CO.
Atlanta 30326—3144 Lenox Towers
Chicago 60611—360 N. Michigan Avenue
Southfield, Mich. 48075—Northland Towers
Los Angeles 90017—3450 W. 9th Street
Minneapolis 55402—3311 Foshay Tower
New York 10022—320 Park Avenue
Philadelphia 19102—2 Penn Center Plaza
San Francisco 94104—1707 Russ Building

3—COMMISSION AND CASH DISCOUNT

a. 15% commission to agencies recognized by the San Francisco Newspaper Printing Co.
b. 2% cash discount, excluding Rotogravure advertising.
c. Discount date—15th of the month following publication.

4—GENERAL

a. It is a condition of this rate card that the San Francisco Newspaper Printing Co. reserves the right to revise its advertising rate at any time, and that advertising contracts of record will be honored for a 30-day period.
b. The San Francisco Newspaper Printing Co. reserves the right to omit any advertising submitted for publication
c. Advertising set in imitation of news must carry "Advertisement" at top.
d. The San Francisco Newspaper Printing Co. shall not be liable for failure to publish advertisements by reason of strikes, lockouts, earthquakes, fires, floods, riots, or acts of God.

5—DAILY & SUNDAY B.O.P. RATES (GENERAL)

	Per Line
a. Chronicle—(morning) flat	$2.10
Examiner—(evening) flat	1.90
b. Combination—(M & E) flat	2.80
c. Sunday—flat	2.80
d. Combination rate applies when advertisement appears both morning and evening of same day, or evening and following morning at Advertiser's option. Insertions starting evening edition Saturday will be completed Monday morning. Sunday rate covers that edition only.	

EXHIBIT 10
WITNESS
2-22-75
EARL C. KARRY, C. S. R.

The only exception was in Los Angeles. Here, of course, we had the experience of two mergers at the same time where most sideline "experts" were confounded to see the evening Hearst combination end up with 6% more circulation than the two evening papers combined before the merger. Obviously, the fact of the morning merger at the same time provided some impetus to this. As I understand it from the local people, substantial anti-Chandler sentiment in labor circles had much to do with people switching to the evening field, rather than buying the Times in the morning. A similar situation does not seem to exist in San Francisco.

In most cases the papers that did not merge gained slightly in circulation (between 2.8% and 6.9% in a two year period). San Francisco was the only exception and here we had the tremendous circulation drives by the Chronicle and Examiner. Generally, however, there seems to be substantial difficulty in getting people to switch from the morning to the evening field, or vice versa, and in all cases except San Francisco, there was an overall circulation decline of between 3.9 and 8.0%.

How we apply this experience to the new San Francisco set-up is not simple because certain forces are at work in San Francisco that were not present in any of the other cases. While the San Francisco morning field will look superficially like any other case where one newspaper buys out another, the afternoon product will look considerably different - will probably be larger, contain more features, and will be promoted harder.

HT00765

One the other hand, the afternoon paper will still be meeting up with some f the same problems that kept it down before.

1. San Francisco itself is a smaller part of its area than most other cities and it is rapidly becoming a smaller and smaller part of the whole.

2. It will still run up against 21 evening newspapers in the bay area with about 600,000 circulation (about a 60,000 increase since 1958). This is roughly comparable to the combined circulations of the Chronicle and Examiner.

3. The habit and greater convenience of buying morning newspapers on the part of those who buy them now.

The problem in San Francisco is not quite the same as the one in Los Angeles at which Hearst must be looking. In Los Angeles morning circulation was 3 to 2 over evening before the twin merger. In San Francisco it is better than 3 to 1. The city of Los Angeles is a much better base to work from (1/3 the area) than San Francisco (1/5 the area), and the Los Angeles-Long Beach metropolitan area for all its size has proportionately less competing evening circulation outside the central city (650,000).

Despite these difficulties, with a better product there undoubtedly will be a far greater than average increase in the evening field. The Examiner name a good one and there is much loyalty to it. They will succeed in attracting

a fair portion of their former circulation. Here are two projections (I prefer the first one):

	Old	New	% Change	Or	% Change
Morn.	622,000	500,000	-19.6	500,000	-19.6
Eve.	187,000	250,000	+33.7	275,000	+47.1
Total	809,000	750,000	- 7.3	775,000	- 4.3

One thing that I am concerned about is the possibility that the combination will not maintain 775,000 circulation or, for that matter, 750,000. San Francisco morning newspapers maintain their current levels by intense and costly promotions. With the absence of competition will there be any need for such expensive measures? Without them can we expect circulations to stay close to present levels?

As to the rates to charge, naturally a forced combination would be the best for us. If this is impossible, it would be desirable to charge as close to a forced combination as is legally possible. Looking at either of the rates mentioned by you, they would seem to be reasonable charges compared with the rates of other combinations arranged by major monopoly newspapers.

Table Attached

HT00767

	Daily Comb.	M	E	Total	Comb. Saves	Amt. Saved As % Total	Amount Saved by Using Lead Paper Only	Amt. Saved As % Second Paper's Rate
San Francisco (A)	2.50	1.95	1.50	3.45	.85	27.5	.85	36.7
(Proposed) (B)	2.50	1.85	1.65	3.50	1.00	28.6	.65	39.3
Minneapolis	1.50	.95	1.10	2.05	.55	26.8	.40	42.1
Kansas City	1.40	.95	.95	1.90	.50	26.3	.45	47.4
Milwaukee	1.50	1.05	.60	1.65	.15	9.1	.45	75.0
New Orleans	1.05	.80	.70	1.50	.45	30.0	.25	35.7
Atlanta	1.25	.87	.93	1.80	.55	30.6	.32	34.4
Pittsburgh	1.83	1.05	1.10	2.15	.32	14.9	.73	69.5
San Diego	1.90	Morn. & Eve. not sold separately						

	M Circ.	E Circ.	Total	Weaker Papers % Total
Minneapolis	215,803	278,159	493,962	43.7
Kansas City	337,038	339,636	676,674	49.8
Milwaukee	160,837	360,845	521,682	30.8
New Orleans	197,448	159,263	356,711	44.6
Atlanta	200,642	254,622	455,264	44.1
Pittsburgh	247,506	353,274	600,780	41.2
San Diego	111,303	115,166	226,469	49.1
San Francisco	500,000	275,000	775,000	35.5

HT00768

I am not sure, however, that even as substantial a saving as this would be enough to keep a number of advertisers in the weaker newspaper in San Francisco. Some advertisers are quite anxious to save money by staying out of combinations. 78,000 lines of food advertising in Minneapolis' evening paper, or 19% of the total runs evening only. (Some runs morning only, too). In pittsburgh where the opportunities are greater to split schedules, about 275,000 or 38% of the total runs evening only. Certain large advertisers like Swift and Heinz seem to avoid 2nd papers in combination cities. San Jose might think that with San Jose and Oakland to chase them, perhaps others might do likewise.

Incidentally, of the 78,000 lines running in Minneapolis evening, about 70,000 run in St. Paul. Most of this would probably run there anyway, but Lou Heindel might not realize that. My own recommendation would be:

Comb.	Morn.	Eve.	Total	Saving	% Saving	Amt. Saved Buying Lead Paper only	Amt. Saved as % 2nd paper rate
2.50	2.10	1.40	3.50	1.00	28.6	.40	28.6

The trick is to charge as much as possible for your larger paper. If it is close enough to the combination rate, it makes little difference what you charge for the weaker paper. My feeling is that the suggested rate set-up allows so small a saving in not buying the second paper that San Jose could not reasonably expect to steal linage from it. It should not be unreasonable to the government because it has a large morning-evening differential, well in line with probable circulation differences. (morning milline probably about $4.13, evening between about $5.10-5.20).

HT00769

San Jose's objections to any combination such as this, with Sawyer, Ferguson, Walker as its representative would be based first and foremost on an emotional reaction. Here is a giant "combo" being put together with at least the side purpose of destroying San Jose's entire selling strategy. They might feel that Sawyer-Ferguson-Walker had a part in it and may have even instigated it. They will certainly think we had something to do with the rates set, especially if they are set to exclude any possibility of a nibbling at the weaker newspaper. They would also feel that there would be less money left after a two paper buy to purchase San Jose than there is now.

In actuality, this combination should help San Jose. The Mercury could compete on solid ground for the Examiner morning circulation that would be up for grabs. They would have a wonderful opportunity created by the absence of competition between two San Francisco morning papers that must relieve some of the promotion pressure. It is doubtful that any evening newspaper could get much more coverage than the 5% the News Call Bulletin already has. Whatever it does get would undoubtedly be at the expense of the morning paper. Thus, San Jose coverage should go up and San Francisco penetration should go down.

Lower penetration and greater coverage would make the growing San Jose market a better buy than ever.

This emotional reaction can be laid to rest only if we explain the whole thing to them before it becomes official. This is most important because even if we were

HT00770

to lose San Jose, if it were on rational grounds it is most likely that we would maintain representation of the rest of the Ridder group. An emotional reaction of a "stab in the back" variety could be most unfortunate in its repercussions.

Assuming a combination rate that would exclude nibbling away at the evening buy, San Jose's objection would be directed toward the fact that, on an account that ran, say 5,000 lines in the combination and 1,000 lines in Oakland and San Jose, we could not ask the advertiser to take money out of the combination for San Jose. On such an account Oakland's vulnerability is irrelevant. We must either come up with good, sound convincing proof that this can't be done or we are in trouble. It must be remembered that it took us a long time to convince Lou Heindel that we could sell San Jose effectively without being free to sell against the Chronicle. Now we must convince him that we can sell San Jose effectively without selling against any San Francisco newspaper.

What we need to do is show that San Jose can be sold more effectively by us without San Francisco targets than by any other representative with such targets. And it is true - we can. We understand the market and the Bay Area better and we are better set-up for pre-selling (sales system) than any representative in the business. Frankly, I think that with all the money and time and selling pieces San Jose puts out, we could demonstrate by putting out just one selling piece ourselves that we understand their market and how to sell it even better than they do. I feel we should move in this direction immediately.

It is my feeling that the evening newspaper in this combine may have some serious

HT00771

difficulties. It will be so much smaller than the morning newspaper that it might be a difficult "sell". If for legal reasons it is found necessary to make it a genuine optional combination, many national advertisers might buy the morning only. The answer to this could very well be a genuinely optional combination that included San Jose. Such a combination would increase the desirability of the evening newspaper and would be of tremendous help to San Jose - and frankly, this might be the only way we could keep San Jose. Getting Lou Heindel to accept it could very well be an impossible task on any other basis.

Gene Delgin

GD:eb
3/24/64

HT00772

POST MERGER CIRCULATION BEHAVIOR OVER TWO YEAR PERIODS IN MAJOR MARKETS

CLEVELAND

	PRESS (E)	NEWS (E)	PLAIN DEALER (M)	TOTAL
3/31/59	320,573	136,112	313,713	770,398
COMBINED	456,685			
3/31/60 "	388,247		308,142	696,389
3/31/61 "	385,347		323,406	708,753
1959-1961	-15.6		+ 3.1	- 8.0

SAN FRANCISCO

	CALL BULL(E)	NEWS (E)	CHRONICLE(M)	EXAMINER (M)	TOTAL
3/31/59	145,070	98,808	236,480	263,500	743,858
COMBINED	243,878				
3/31/60 "	212,136		266,895	270,978	750,009
3/31/61 "	200,521		291,555	277,978	770,054
1959-1961	-17.8		+ 23.3	+5.5	+ 3.5

DETROIT

	NEWS (E)	TIMES (E)	FREE PRESS(M)	TOTAL
3/31/60	480,673	373,295	500,220	1,354,188
COMBINED	853,968			
3/31/61 "	733,583		573,273	1,306,856
3/31/62 "	725,006		514,129	1,239,135
1960-1962	-15.1		+2.8	-8.5

HT00773

PITTSBURGH

	POST-GAZETTE & SUN TEL. (M)	PRESS (E)	TOTAL
3/31/61	294,442	367,671	662,113
Merger during this period			
3/31/62	262,186	363,604	625,790
3/31/63	247,506	352,274	600,780
1961-1963	-15.9	-3.9	-9.3

LOS ANGELES

	MIRROR	HERALD EXPRESS	EXAMINER	TIMES	TOTAL
3/31/61	292,091	378,613	375,552	552,220	1,598,476
	Evening Field		Morning		
3/31/61	670,704		927,772		1,598,476
	Her-Examiner(E)		Times (M)		
3/31/62	721,026		772,439		1,493,465
3/31/63	708,791		761,481		1,481,521
1961-1963	+ 5.7		-17.9		- 7.3

CINCINNATI

	POST (E)	TIMES STAR (E)	ENQUIRER	TOTAL
3/31/58	157,695	149,443	203,675	510,813
COMBINED	307,138			
3/31/59	266,437		213,050	479,487
3/31/60	273,178		217,738	490,886
1958-1960	-11.1		+ 6.9	-3.9

Source: ABC 3/31 Publisher's Statements

HT00774

PITTSBURGH FOOD ACCOUNTS THAT ARE EVENING ONLY

	Morn.	Evening
Gerbers		12,004
Swift's Baby		250
Baker Cakes		
Pastry Fillings	442	2,795
Betty Crocker Company		1,000
Burry's Cookies		2,520
Gold Medal Flour		2,000
Maxam's Cake		315
Pillsbury Flour		585
Sunshine Crackers		4,410
Thank you Pie Fillings		1,878
Wondra Flour		2,590
Chase & Sanborn Inst. Coffee		2,460
Siesta Instant Coffee		2,634
Yuban Coffee		1,200
Bottom's Up		1,276
Canada Dry		13,786
Cott		852
Orange Crush		3,630
Patio Diet Cola		7,560
Pepsi	110	770
Schweppe's		5,692
Teem	2,212	6,230
Blend Orang-Lemon Drink	1,168	2,340
Health-Kist Orange Juice		300
Hi-C and Minute Maid		400
Kraft Orange Drink		1,210
Round Clock Juice		2,814
Tang		5,040
General Mills Corn Flakes		1,812
Quaker Muffets		600
Bennett's Chili Sauce		1,600
Domino Sugar		660
Franco Products		2,120
Heinz Pickle Bazaar		3,000
Kraft Dressing		1,000
Red Pack Tomato Paste		256
Sauce Arturo		920
Spatini Spaghetti Sauce		2,520
Stouffer's Products		3,640
Tween's Products		660
Vermont Maid Syrup		4,068

HT00775

	Morn.	Evening
Borden's Ice Cream		4,411
Cracker Barrel Cheese	1,015	7,004
Fleischmann's Margarine		2,008
Mirocle Margarine	2,008	5,000
Jiffy's Frozen Meat Prods.	2,070	9,657
Mrs. Paul's Frozen Foods		4,520
Mrs. Smith's Frozen Pies		13,412
Seapak Frozen Prods.		4,326
Stouffer Frozen Prods.		3,720
Armour Meat Products	7,125	13,100
Arsenal Meat Products		2,004
Buddig Meats		397
Crayton's Meats		120
Jones meat		800
Kahn's Meat		560
Star-Kist Tuna		5,955
Sugardale Meat Prod.		7,560
Burger's N Gravy		1,010
Joy Dog Food		285
Ken-L-Ration		2,520
Tabby Cat Food	598	1,350
Thrivo Dog Food	1,362	2,191
Armour & Open Pit		1,040
Cal. Pear & Peach Growers		2,520
Chiquita Bananas		2,520
Dole Fruits		1,000
Franco-American		1,005
French Potatoes		1,000
Heinz Soups	12,100	30,740
Idaho Potatoes		3,578
Kraft Dinners & Toppings		1,786
La Premiata Macaroni		1,474
Lucky Whip		580
Maxam's Products		845
Minute Rice		600
Pacific Coast Pears		2,190
Progresso		7,560
Swiftning		1,200
Wash. State Apples		2,023
White Pearl Macaroni		760
Swift Meat Products	2,520	20,920
	30,680	307,394

NET 276,714

HT00776

MINNEAPOLIS vs. ST. PAUL

Full run food accounts that run evening only in Minneapolis, or run substantially more evening than morning.

	Minneapolis		St. Paul
	Morn.	Eve.	
Duncan Hines		900	900
Golden Indian Bread		840	540
Sunshine Crackers		4,242	-
Wondra Flour	1,590	2,596	2,596
Canada Dry Bev.		1,954	2,250
Like Bev.		6,500	-
Heinz Pickle Bazaar		3,000	3,000
Switzen's Licorice		868	-
Whitman's Chocolates		1,212	-
Betty Lou Cheese		2,025	2,050
Nucoa Margarine	4,808	6,296	6,267
Reddi-Whip	600	1,200	1,200
Lambrecht Cheese Cake		1,025	1,025
Pet-Ritz Frozen Pies		2,248	2,232
Swift Meats		16,621	15,468
Rath Ham		1,310	1,288
Swanson Froz. Meat Pies		1,000	-
Puss N' Boots Cat Food		1,000	1,000
Rival Dog Food		5,560	5,596
Heinz Soups		21,816	21,816
Homemaker's Beans	3,009		
La Choy Products		3,374	3,374
Swiftning			
TOTAL		77,989	70,602

HT00777

EXHIBIT C

SAWYER · FERGUSON · WALKER COMPANY

500 PARK AVENUE • NEW YORK 22
ADAM 5-2100 PL 5-2300

April 14, 1964

PERSONAL AND CONFIDENTIAL

Mr. Robert Ward
San Francisco Chronicle
Fifth and Mission Streets
San Francisco, California

Dear Bob:

Some further thoughts from Gene Dalgin, our research man who is involved in crystal ball gazing and recommendations.

The conviction prevails that rather than the first appraisal being high on the A.M. side and low on the P.M., there's more chance of the reverse being true. Some of his reasons are outlined in the enclosed, copy of which I'm sending to Charlie at his hotel. I'll discuss it with him when we get together, but in the meantime, I'm sure he'd want you to see this too.

Cordially yours,

J. L. Ferguson
JLF

2-22-75

NEW YORK
CHICAGO
DETROIT
PHILADELPHIA
ATLANTA
WASHINGTON
SAN FRANCISCO
LOS ANGELES

EXHIBIT B

I

SAN FRANCISCO COMBINATION

In setting a line rate for this proposed combination, ideally from our standpoint, only two things should be considered:

1. What the circulation will shake down to in order to estimate:
   a. how the circulations and thus the rates will divide, and
   b. How much we can charge without over or undercharging.
2. Keeping the rates for the combination close enough so that the combination will be a must buy thus insuring that San Jose and Oakland can't chip away at the weaker paper.

However, legal considerations also must come into play and while we are not legally competent, later in this report we are including the rate structure of major merged newspapers, perhaps to give us some guidelines.

To attempt to help us determine what might happen to circulation after such a merger, I have included tables of circulation experience after seven mergers in six major markets. (See Table A).

In all these cases, the two merging newspapers were either both morning or both evening. In 6 of the 7 cases when two papers became one, there was a substantial loss in circulation by the merged newspapers - A loss ranging from 11.1% to 17.9% over a two year period.

PDI EXHIBIT 9
WITNESS Levi, F.L.
2-27-75
GAIL C. CARRY, C. S. R.

HT00764

BAY AREA COMBINATION

It is my conclusion that on our prior estimates we have over-estimated what the evening paper can do, and have far under-estimated what the morning paper will do after the merger. What I feel has been left out of serious consideration is that despite the fact that currently, morning circulation outnumbers evening circulation by better than 3 to 1 in San Francisco, within the whole Bay Area there is actually slightly more evening circulation than morning circulation. While there is 602,000 in evening circulation in non-San Francisco newspapers, there is only about 112,000 in morning circulation. Thus, we have about a 789,000 to 738,000, or 7% advantage in evening circulation over morning. If the San Francisco city evening circulation were to increase to 275,000, and the morning were to decrease to 475,000 if evening and morning circulation of other than San Francisco papers were to remain constant, we would have a huge 48% or 280,000 differential in favor of the evening field. We would have to assume this unless we assumed that the evening San Francisco paper took circulation away from the other outside San Francisco evenings rather than from the morning. But, if that were true, then we would also be assuming that there would be substantially fewer newspaper readers in the Bay Area. I think that prospect unlikely. In addition to that, I do not feel that the evening paper can expect to take too many readers away from outside evening papers. This trend toward local evening papers in the Bay Area has been a strong and continuing one. In the period from 1955 to 1963, there was a 28% or 132,000 copy increase in circulation of local papers in the Bay Area outside the city of San Francisco. It is not just a well publicized increase like the one in San Jose that has caused

this change. There have been sharp increases in circulation in Palo Alto, San Rafael, Hayward and others that have contributed to this great increase. During this same period of time, the evening San Francisco field has gone down from 247,000 to 187,000, a decrease of about 24%.

There is certainly good and substantial reason for these increases as the city of San Francisco has become a smaller and smaller portion of the Bay Area as a whole while the smaller cities, on the other hand, have increased in size and influence. The interest in these local areas has spurred a demand for local evening newspapers to adequately cover the local evening news. Since San Francisco does not seem to be reversing the trend of this decreasing size relationship with the rest of the Bay Area, I see no reason why we can expect that competitive pressure against the evening San Francisco newspaper will decrease. Quite the opposite seems to be true. I do not see how even a superior evening newspaper in San Francisco can reverse this trend markedly. Therefore, my feeling is that the estimate of 250,000 for the evening newspaper, rather than being a low estimate is a high estimate, and I am not at all sure that this 250,000 circulation could be maintained over a long period of time. Most of the circulation increase that does take place will do so at the expense of the morning, but this will be limited, as will be explained later.

On the other hand, I think the estimate of 450,000 to 475,000 for the morning paper is quite a bit too low. Despite the fact that the current high circulation of about 620,000 was built at least partially on the basis of substantial and heavy competitive promotion, there is virtually nothing in the morning field to take up the slack. Presumably, some of this morning circulation will shift to evening.

I doubt very much whether the quantity of this will be great. People who buy morning newspapers buy them more than just for the quality of the newspapers. It is convenient for them to buy a morning newspaper, so they purchase it. Unless the loyalty to a name is greater than I think it is, not a great deal of it will switch, especially since there will still be a fine morning newspaper to buy. The circulation estimates that the Chronicle gave us would entail changing the whole morning-evening circulation balance around to the extent that what is now a fairly well-balanced morning and evening circulation picture, would become a primarily evening circulation set-up. I can't quite see how this merger can possibly do that herculean task. Experience in other markets would certainly cast doubt on it.

If the morning circulation does not go to the evening newspaper in great quantity, what then will happen to it if it leaves? Except for San Jose and Vallejo, the two present San Francisco morning newspapers are the only morning newspapers in the entire Bay Area. We would have to assume that a tremendous quantity of circulation will vanish into thin air. Of course, some circulation will vanish, but even in an estimate of 500,000 for that matter, 525,000 in the morning, we are assuming a great deal of vanishing circulation.

The study I sent to San Francisco of the experience after other mergers would also back up my argument. True, this merger is quite different than the others, but even in Los Angeles there was not the kind of morning-evening switching in circulation losses and gains, that the Chronicle's estimates project.

The circulation breakdown that we can expect is most important for setting the rate, not only for the legal considerations, but in working out a rate that will virtually

assure that almost all morning linage will be in the evening paper.

For the combination to be effective in obtaining evening linage in the national field it is most vital that the rates be set so that the evening is a must buy for virtually all advertisers. This is particularly important and difficult in San Francisco because we are starting out with a relatively weak evening newspaper we want to bolster; and particularly at the beginning we must expect many advertisers to prefer not to use it.

An additional reason the problem is more difficult for an optional combination in San Francisco than in smaller areas is that a major market gets many more small advertisers than do smaller markets - advertisers who, because of limited budgets, advertise in only the top few markets. They include many who are now one newspaper buyers in San Francisco. They will need a strong incentive to advertise in the combination. If we ascribe too high a proportion of the circulation and the rate to the evening paper, we will be inviting newspaper advertisers to leave it out of their advertising program. My estimate is that the morning newspaper will have a 500,000 circulation with perhaps as much as 525,000 and that the evening newspaper will have a top of 250,000.

Under such circumstances, I do not feel that there would be a sufficient incentive to spend the $.54 for the evening newspaper to make it vital for all advertisers. At 500,000 the milline for advertising in the morning only would be $4.01. True, this is high - but it is only $.59 higher than the San Francisco Chronicle's milline of today. If the morning paper should hit 525,000, the milline would be $3.82 for only $.34 higher than the Chronicle is today. Under those circumstances if an advertiser is not interested in buying the 2nd paper in the market, he has an easy

way out. True, the milline rate for adding the evening paper is only $2.12, but experience shows that too many advertisers would like to break up combinations like this if it is at all feasible. Kansas City is a good example of this - well over 100,000 lines of food linage runs either morning only or evening only in Kansas City. About a third of their limited liquor linage also runs evening only. The similar situation in Minneapolis was discussed in the last report.

The only newspapers checked that did not have to sacrifice fairly large proportions of their linage in the weaker paper were Atlanta and New Orleans. In each case, the evening paper had millines below $1.60 for adding the weaker paper. My recommendation for a rate would be as follows.

	RATE	ESTIMATED CIRCULATION	MILLINE
Combination	2.58	750,000	3.38
Morning	2.18	500,000	4.29
		525,000	4.08
Evening	1.30	250,000	5.20
Combination Saves	.90		
Rate for adding Eve.	.40		1.57

This rate structure would have the advantage of a reasonable difference in cost between the morning and evening paper and a rate differential between the morning and evening small enough ($1.59 milline) to preclude substantial morning only buying.

While the entire rate structure is based on a high rate, the relationships of the rates and millines are not out of line compared with other optional combination newspapers.

In conclusion, when setting the rate, if there is doubt as to what the circulations of the two papers will be it is most important that the circulations favoring the morning paper be assumed. If this is not done, it will be most difficult to maintain a satisfactory level of national linage in the evening newspaper if the higher morning circulation is achieved.

BAY AREA EVENING NEWSPAPER CIRCULATION

1954 – 1963

	1963		1954
ALAMEDA	8,876	ALAMEDA	9,487
ANTIOCH	6,391	ANTIOCH	3,634
BERKELEY	13,901	BERKELEY	15,718
CONCORD	9,452		
FAIRFIELD	6,044		
GILROY	2,848	GILROY	3,220
HAYWARD	30,793	HAYWARD	9,178
LOS GATOS	4,735	LOS GATOS	2,443
MARTINEZ	4,992		
NAPA	14,029	NAPA	10,562
OAKLAND	202,072	OAKLAND	191,920
PALO ALTO	38,638	PALO ALTO	22,848
PITTSBURGH	5,926	PITTSBURGH	5,183
REDWOOD CITY	20,329	REDWOOD CITY	15,966
RICHMOND	33,446	RICHMOND	30,570
SAN JOSE	63,158	SAN JOSE	40,232
SAN MATEO	31,671	SAN MATEO	20,647
SAN RAFAEL	32,845	SAN RAFAEL	17,040
SANTA ROSA	37,762	SANTA ROSA	26,239
SUNNYVALE	8,300		
VALLEJO	35,988	VALLEJO	21,528
		BURLINGAME	8,061
		PETALUMA	5,105
		MOUNTAIN VIEW	3,911
	602,198		469,569

GAIN 132,629

SAN FRANCISCO	187,000	SAN FRANCISCO	247,000
TOTAL	789,198	TOTAL	716,569

Source: ABC Publisher's Statements -September 1963
&
As appearing in Editor & Publisher Market Guide for 1954

NAL

GENERAL, LIQUOR AND FOOD LINAGE
Morning & Evening Newspapers of Optional Combinations

	Total General Linage		% Advantage of the Lead Paper	Liquor Linage		% Advantage of the Lead Paper	Food Linage		% Advantage of the Lead Paper
	M	E		M	E		M	E	
Atlanta	2,489,498	2,588,758	4.0	519,088	523,468	-	551,257	574,755	4.3
New Orleans	2,324,178	2,290,125	1.5	361,238	356,025	1.5	482,921	446,978	8.0
Norfolk	2,127,402	2,130,637	-	612,013	609,419	0.4	521,030	487,101	7.0
Tampa	2,092,807	1,730,800	20.9	379,448	265,689	42.8	585,891	433,822	35.1
Minneapolis	1,729,226	2,033,773	17.6	-	-		522,281	601,189	15.1
Milwaukee	1,000,946	2,638,877	163.6	118,042	340,960	183.8	137,113	756,293	[illegible]
Kansas City	1,626,195	1,775,870	9.2	No Factor			574,722	522,589	10.0
Pittsburgh	2,266,648	2,926,554	29.1	480,306	597,314	24.4	394,469	685,843	73.9

Source: Media Records

MILLINES VARIOUS OPTIONAL COMBINATIONS

	Milline Comb.	Milline 1st Paper Alone	Milline 2nd Paper Alone	Milline Adding 2nd to 1st In Combination
Minneapolis	2.99	3.88	4.33	1.82
Kansas City	2.04	2.75	2.78	1.30
Milwaukee	2.83	2.87	3.67	3.75
New Orleans	2.89	3.98	4.33	1.54
Atlanta	2.70	3.59	4.27	1.56
Pittsburgh	3.00	3.06	4.17	2.80
Norfolk	3.39	4.51	5.02	1.93
Tampa	3.33	3.94	7.48	2.07
San Francisco	3.38	4.29	5.32	1.57

Source: Circulations
ABC Publisher's Statements - Sept. 1963
Rates: SRDS March 1964

KANSAS CITY FOOD LINAGE 1963

Morning Only or Morning Dominant

	Morning	Evening
Heinz Baby	995	
Forbes Coffee & Tea	2,111	
Forbes Bar Q Spices	2,374	
Heinz Pickle Bar	3,000	
Milani's Dressing	2,239	
Allerjoy	1,506	
Mazola Margarine	800	
Milnot	2,646	
Miracle Margarine	7,992	
Mocha Mix	1,506	
Mrs. Paul's Frozen Food	2,836	
Sara Lee	1,701	804
Swanson Frozen Dinners	4,976	
Totino's Frozen Foods	1,180	
Swift's Meats	4,425	
Wilson's Meats	24,573	7,898
Gold Medal Flour	2,000	
Wondra Flour	2,596	
Tang	3,732	1,866
Maxwell House Coffee	3,488	2,488
Friskies	1,500	
California Peach	4,976	2,488
	83,452	15,544

Net Favors Morning 67,908

Source: Media Records

KANSAS CITY LIQUOR LINAGE
1963

Evening only or dominant

	Morning	Evening
Ancient Age		4,855
Cutty Sark		2,732
DeWar's Scotch		1,800
Hill & Hill		1,950
I. W. Harper		3,040
J&B Scotch		672
Johnnie Walker		1,000
Smirnoff		8,626
Vat 69 Scotch		1,000
Windsor Canadian		1,000
		26,675

Source: Media Records

SAN FRANCISCO vs. OTHER MAJOR COMBINATION CITIES
Rate and Circulation Comparisons

	Daily Comb.	M	E	Total	Comb. Saves	Amt. Saved As % Total	Amount Saved by using Lead Paper Only	Amount Saved as % Second Paper's Rate
San Francisco (A)	2.58	2.04	1.40	3.44	.86	25.0	.54	38.6
(B)	2.58	2.18	1.30	3.48	.90	26.1	.40	30.8
Minneapolis	1.50	.95	1.10	2.05	.55	26.8	.40	42.1
Kansas City	1.40	.95	.95	1.90	.50	26.3	.45	47.4
Milwaukee	1.50	1.05	.60	1.65	.15	9.1	.45	75.0
New Orleans	1.05	.80	.70	1.50	.45	30.0	.25	35.7
Atlanta	1.25	.87	.93	1.80	.55	30.6	.32	34.4
Pittsburgh	1.83	1.05	1.10	2.15	.32	14.9	.73	69.5
San Diego	1.90	Morning & Evening not sold separately						
Norfolk	.75	.55	.52	1.07	.32	32.2	.20	38.5
Tampa	.68	.58	.33	.91	.23	23.2	.10	30.3

	(M) Circ.	(E) Circ.	Total	Weaker Papers % Total	Milline Adding 2nd Paper
Minneapolis	215,803	278,159	493,962	43.7	1.82
Kansas City	337,038	339,636	676,674	49.8	1.30
Milwaukee	160,837	360,845	521,682	30.8	2.75
New Orleans	197,448	159,263	356,711	44.6	1.54
Atlanta	200,642	254,622	455,264	44.1	1.56
Pittsburgh	247,506	353,274	600,780	41.2	2.90
San Diego	111,303	115,166	226,469	49.1	
Norfolk	119,727	101,784	221,511	45.9	1.93
Tampa	144,508	43,403	187,911	23.1	2.07
At Chronicle - Suggested Rate & Circulation					
San Francisco	475,000	250,000	750,000	34.5	2.12
At Our Suggested Rate and Circulation					
San Francisco	500,000	250,000	750,000	33.3	1.89